IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 243 of 2007 (M/S)

Gopi Chand Gupta, S/O Shri Nanak Chand, R/O 89/1, Chandeshwar Marg, Mayakund, Rishikesh, District Dehradun.

…… Petitioner.

Versus

1. Civil Judge (Junior Division), Rishikesh, District Dehradun.
2. Nagar Palika Parishad, Rishikesh, District Dehradun, through its Executive Officer.
3. State of Uttarakhand, through Collector, Dehradun.
4. Davinder Singh, S/O Late Shri Sukhdev Singh, R/O 17, Bengali Mandir Marg, Rishikesh, District Dehradun.
5. Taranjeet Singh, S/O Late Shri Sukhdev Singh, R/O 17, Bengali Mandir Marg, Rishikesh, District Dehradun.
6. Daljeet Singh, S/O Late Shri Sukhdev Singh, R/O Bengali Mandir Marg, Rishikesh, District Dehradun.
7. Smt. Tej Kaur, W/O Late Shri Sukhdev Singh, R/O 17, Bengali Mandir Marg, Rishikesh, District Dehradun.
8. Govind Singh, S/O Latge Shri Sukhdev Singh, R/O 17 Bengali Mandir Marg, Rishikesh, District Dehradun.
9. Smt. Paramjeet Kaur, W/O Shri Daljeet Singh, Resident of Shimlapuri, Ludhiana, District Ludhiana.
10. Smt. Amarjeet Kaur, W/O Shri Kuldeep Singh, Resident of Gokul Road, Ludhiana, District Ludhiana.
11. Smt. Ravinder Kaur, W/O Shri Dilbag Singh, Resident Pulsawa, Chandigarh, District Chandigarh.
12. Smt. Baljeet Kaur, W/O Shri Rajendra Singh, Resident of Near Bus Stand, Sirhand, District Sirhand.

… Respondents.

Sri Ramji Srivastava, learned counsel for the petitioner.
Sri N.P. Sah, learned Standing Counsel for the respondent no.1 & 3.

Dated April 03, 2007.
Hon'ble B.S. Verma, J.

Heard learned counsel for the petitioner and perused the material record.

This writ petition has been filed for issue a writ, order or direction in the nature of certiorari, quashing the impugned order dated 16-3-2007 (Annexure No.6 to the writ petition) passed by Civil Judge (Junior Division) Rishikesh, District Dehradun and with a prayer to reject the impleadment application (paper no.55-

C2) dated 15.3.2004/5.11.2004 (Annexure No.4) filed by the respondent no.2.

Relevant facts giving rise to this writ petition are that the petitioner filed Original Suit No. 515 of 1996, Gopi Chand Gupta Vs. State of Uttar Pradesh (nor Uttarakhand) and other for a decree of injunction against Sukhdev Singh, father of respondent nos. 4 to 6 as well as respondent nos. 7 and 8 in the court of Civil Judge (Senior Division) Dehradun. Sukhdev Singh died and he was substituted by his legal heirs in the suit. It is alleged that the disputed property is a shop situated at Lajpat Rai Marg Rishikesh, District Dehradun. The respondent no.3 filed written statement in the suit on 29-1-1997, while written statement on behalf of respondent no. 8 was filed on 29-8-2000. Subsequently, the suit was transferred to the Court of Civil Judge (Junior Division) Rishikesh (Dehradun), where an application for impleadment (paper no. 55-C2) under the provisions of Order 1, Rule 10(2) CPC was filed by the respondent no.2 for seeking impleadment of Nagar Palika Parishad in the suit. Along with the impleadment application, the respondent no.2 filed copy of judgment and decree dated 23-9-1999 passed by Civil Judge (Senior Division) Dehradun in Original Suit No. 650 of 1995 Gopi Chand Gupta Vs. Sukhdev Singh and others. It was asserted that the Nagar Palika Parishad had been arrayed as party in Original Suit No. 650 of 1995 and that the present suit is also in respect of the same property, which is in respect of *Khoka* (kiosk) existing on the public road and *Nali* and the respondent no.2 has a right to get the same removed by the plaintiff. It was also stated that the plaintiffs had not arrayed the Nagar Palika Parishad as party with ulterior motive, therefore, in Original Suit No. 515 of 1996, it being a necessary party be impleaded in the suit as defendant. The petitioner filed his objection against the impleadment application contending that the respondent no. 2 was neither necessary nor property party for adjudication of controversy involved in the suit and no relief has been claimed against it. The trial court after considering the

application as well as objection filed by the petitioner, allowed the application for impleadment of the Nagar Palika Parishad vide order dated 16-3-2007, which is impugned in the present writ petition.

The main ground of challenge as raised by the learned counsel for the petitioner is that the plaintiff cannot be compelled to implead a third party in the suit when no relief had been sought against that third party.

I have heard learned counsel for the petitioner, Sri Ramji Srivastava at length and have perused the impugned order passed by the trial court vis-à-vis the application for impleadment filed by the defendant-respondent no.2 and the objections filed against the same by the petitioner. The contentions raised by the learned counsel are misconceived and not tenable for the following reasons.

Firstly, the petitioner-plaintiff had filed copy of the plaint as Annexure No.1. In paragraph no. 5 it has been alleged by the plaintiff that the plaintiff has been praying in rental to Nagar Palika Parishad as per their demand. This averment itself is sufficient to show that the plaintiff is not the owner of the suit property. It is interesting to note that the plaintiff could not dare mention the mode of his occupation over the suit property. Moreover, even if it may be taken for the sake of argument that the plaintiff was the owner of the suit property, in view of averment made in paragraph no.5, the plaintiff himself ought to have arrayed the Nagar Palika as proforma defendant. But it was not done.

Secondly, a bare perusal of the application filed by the Nagar Palika Parishad-respondent no.2 in Original Suit No. 575 of 1996 Gopi Chand Vs. State of U.P. and others goes to show that the applicant-Nagar Palika had specifically stated that the plaintiff had

earlier filed Suit No. 650 of 1995 regarding the same cause of action and the same suit property and the present, wherein the application for temporary injunction was rejected vide order dated 3-8-1996, but the plaintiff had not at all made a reference to O.S. No. 650 of 1995 in the instant suit. Moreover, it was also mentioned that the Original Suit No. 650 of 1995 was dismissed on merit vide judgment and decree dated 23-9-1999. The impleadment application is dated 15-3-2004/5-11-2004. But in the objection filed by the plaintiff against this application for impleadment paper no. 64-C, there is no denial worth the name regarding the facts stated by the applicant. Moreover, it is specific observation of the trial court in the impugned order that for just and proper adjudication of the suit, the applicant Nagar Palika is necessary party to be heard in the suit.

Thirdly, it is not disputed that the earlier Suit No. 650 of 1995 had been dismissed on merit on 23-9-1999, but the plaintiff did not think it proper to make a reference to that suit, wherein Nagar Palika was a party. Even there is nothing on record to show that the plaintiff had preferred to file any appeal before the appellate Court against the judgment and decree dated 23-9-1999.

Lastly, there was yet other forum available to the plaintiff-petitioner to have challenged the impugned order dated 16-3-2007 before the revisional/appellate court, but it was not done for the reasons best known to the petitioner. The learned trial court has not committed any manifest error of law in allowing the impleadment application by order dated 16-3-2007 and the same does no call for any interference by this Court. The writ petition is liable to be dismissed outright at the admission stage.

The writ petition is dismissed in limine.

(B.S. Verma, J.)

RCP